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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,552	07/24/2003	Sergio Landau	BJT 341R1	3550
7590 04/16/2010				
Peter E Heuser Kolisch Hartwell PC 200 Pacific Building 520 SW Yamhill Street Portland, OR 97204			EXAMINER GILBERT, ANDREW M	
			ART UNIT 3767	PAPER NUMBER
			MAIL DATE 04/16/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/627,552

**Applicant(s)**

LANDAU, SERGIO

**Examiner**

ANDREW M. GILBERT

**Art Unit**

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Reissue Applications***

1. The present case is a reissue of U.S. Pat. No. 6264629.

***Acknowledgments***

2. This office action is in response to the reply filed on 7/20/2009.
3. In the reply, the applicant merged the allowed claims from DIV 11/649396 into the present case. The merging of allowed claims pursuant to 37 CFR 1.177(c) obviates the rejection based on lack of reissuable error under 35 USC 251 in the present case (see also MPEP 1450).
4. The entire prosecution history of DIV 11/649396 is hereby incorporated by reference. As all claims of DIV 11/649396 have been merged into the present case DIV 11/649396 has been abandoned.
5. Prosecution in present case of claims 1-20 is hereby unsuspended.
6. Thus, claims 1-35 are pending for examination.

***Reissue Applications***

***Oath/Declaration***

7. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.
8. To identify the error, it is sufficient that the reissue oath/declaration identify a single word, phrase, or expression in the specification or in a specific original claim, and how it renders the original patent wholly or partially inoperative or invalid. The

oath/declaration filed on 5/14/2007 fails to do so. This issue is similar to the discussion of the defective Oath in DIV 11/649396 – which the applicant should review (see at least Non-Final Rejection mailed on 8/20/2008 and the applicant's response on 10/9/2008).

9. For example, consider that the applicant's has a patent which claims in the sole independent claim several elements, including an orange; the original patent discloses that any citrus fruit may be used in the invention such as orange, lemon, grapefruit, or lime. Applicant files a reissue to broaden the claim from being limited only to an orange. The applicant may state in this the part of the oath for example: "Applicant has claimed less than he had a right to claim. Original patent claim 1 was limited to only "an orange", but the invention is more broadly drawn to "any citrus fruit"." Then the applicant can likewise amend claim 1 to no longer be limited to only an orange. The Applicant has to point to at least one specific claim, some specific language, and how it renders the claim inoperative or invalid (i.e. too broad, too narrow, etc.)

10. Claims 1-35 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the oath is set forth in the discussion above in this Office action.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 Form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW M. GILBERT whose telephone number is

(571)272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew M Gilbert/  
Examiner, Art Unit 3767  
/Kevin C. Simons/  
Supervisory Patent Examiner, Art Unit 3767